IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ashutosh Sharma & Anr. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1311/2006 for quashing the proceedings in Criminal Case No.116/1999, pending in the Court of the Judicial Magistrate, Kuchaman City, district Nagaur.

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Date of Order: October 10, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Dhanesh Sarswat, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Pankaj Bohra, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners seek quashing of criminal proceedings in Criminal Case No.116/1999 pending in the Court of the Judicial Magistrate, Kuchaman City, district Nagaur (for short, "the trial Court" hereinafter) arising out of FIR No.129/1998 of Police Station, Kuchaman City, district Nagaur.

I have heard learned counsel for the parties.

On a report lodged by complainant/non-petitioner

No.2, who is the wife of petitioner No.1 Ashutosh Sharma, being FIR No. 129/1998, the police investigated the matter and filed Challan against the petitioners for the offences under Sections 406 and 498-A, IPC, as also under Section 4 of the Dowry Prohibition Act. During pendency of the proceedings, the parties compromised the matter and decided to dissolve the marriage solemnized between the petitioner No.1 and the complainant/non-petitioner No.2. The parties filed a petition for dissolution of marriage before the Family Court, Jaipur on 22.1.1998 being Case No.56/1998. It appears that during pendency of the proceedings, the complainant and the petitioners, on being persuaded by elders and respectable persons, settled the dispute between them and compromised the matter. In the settlement, it was agreed that the petitioner No.1 and the complainant/non-petitioner No.2 could not reconcile to live together as husband and wife and, therefore, decided to dissolve the marriage solemnized between them and a sum of Rs.30,000/- was paid by the petitioner No.1 to the complainant/non-petitioner No.2 as one-time future maintenance. It has also been decided between the parties that the daughter Neha, born out from the wed-lock of the petitioner No.1 and non-petitioner No.2 will continue to live with the petitioner No.1. It was also agreed between the parties that either of the parties will not proceed against each other in the

matters instituted by them and also agreed to withdraw the proceedings initiated by either of them, including the criminal cases instituted by the complainant/non-petitioner No.2 against the petitioners. The parties also filed an application under Section 13-B of the Hindu Marriage Act for dissolution of marriage by a mutual consent.

Mr. Pankaj Bohra, learned counsel for the complainant/non-petitioner No.2, submits that the parties have compromised the matter and the compromise was also filed before the trial Court by the complainant/non-petitioner No.2 and the petitioners on 11-8-2006; however, the trial Court did not record the compromise for the reason that the offence under Section 498-A, IPC is not compoundable. According to the learned counsel for the complainant/non-petitioner No.2, since the parties have compromised the matter, the complainant/non-petitioner No.2 is not going to make any statement against the petitioners as agreed by them in the settlement, including the matrimonial case, and wish to lead the life separately.

In B.S. Joshi & ors. Vs. State of Haryana & Anr., 2003 SCC (Cri.) 848, the Hon'ble Supreme Court held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing the FIR. The Apex Court further observed that the High Court, in exercise of its inherent

powers can quash criminal proceedings or FIR or complaint and Section 320 Cr.P.C. does not limit or affect the powers under Section 482 Cr.P.C. It was further held that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier and that is not the object of Chapter XX-A of the IPC.

Keeping in view the decision of the Hon'ble Supreme Court in B.S. Joshi & Anr. Vs. State of Haryana & Anr. (supra) and the fact that allowing the proceeding against the petitioners to continue any further would be nothing but a futile exercise as the complainant/non-petitioner No.2 and her witnesses are not going to make any statement against the petitioners, as stated by the learned counsel for the non-petitioner No.2, in my view, in the interest of justice, the criminal proceedings against the petitioners deserve to be quashed.

Consequently, the miscellaneous petition is allowed. The criminal proceedings in Criminal Case No. 116/1999 pending before the learned trial Court against the petitioners are hereby quashed.

(H.R. PANWAR), J.

mcs